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Senate

CLASS ACTION FAIRNESS ACT OF 2005

Mr. CARPER. Mr. President, before Senator *Cornyn* leaves the floor, I thank him for his kind words, and I am pleased that we are at the point where we are on this legislation this week. I look forward to both sides exercising constraint--we cannot let the perfect be the enemy of the good--and pass the good legislation that has been introduced and debated this week, with the understanding the House will accept it and the President will sign it into law.

We heard a fair amount already about the ills of class action lawsuits. Class action lawsuits, in and of themselves, are not a bad thing. Class action lawsuits give little people who are harmed, in some cases by companies, the opportunity--maybe not harmed in a way that the consumers, the little people, lose their eye, arm, leg, or life, but they suffer some kind of harm.

The idea behind class action lawsuits is to say when little people are harmed by big companies or others that those people can band together and present their grievances to an appropriate court, State or Federal, and for the people who are harmed to be made whole.

At the same time, it is important that when the plaintiffs are bringing a class action lawsuit against a defendant from another State, that the case be heard in a court where

both sides can get a fair shake, the plaintiffs as well as the defendant.

If we go back over a couple hundred centuries in this country, we ended up with a law that the Congress passed that said if we have a defendant from one State and plaintiffs from another State, it is not fair to the defendant to have the case necessarily heard in the home of the plaintiffs. Someone may have dragged the defendant in across the State lines and put them in a courthouse or courtroom where there is a bias toward the local plaintiffs who brought the case against the defendant from another State, and in an effort to try to make sure that we are fair to both parties, those who are bringing the accusations and those who are defending against them, we have the Federal courts which were established in many cases to resolve those kinds of issues.

Unfortunately, we have seen an abuse of some class action lawsuits in recent years which led the Congress to begin debating this issue and considering legislation to address these abuses starting in, I want to say 1997, 7 years ago. The original problem that was discovered or was pointed out is this: There seems to be a growing prevalence of plaintiffs' attorneys who are forum shopping in State or local courts where the plaintiff class may have an inordinate advantage against the defendant. I will not go into the examples today, but

there are any number of instances where one can see forum shopping has gone on, a State or a county courthouse has certified a class, agreed to hear a case, and it sets up a situation where the defendant company or the defendant knows they are going to have a hard time getting a fair shake in that courthouse. As a result, the defendant will agree to a settlement with the plaintiffs' attorneys. The settlement may richly reward the plaintiffs' attorneys for bringing the case, the defendant may cut their losses, but the folks on whose behalf the litigation was brought in the first place, those who allegedly are harmed, in many instances get little or nothing for their harm. That is not a fair situation. It is not fair to the little people on whose behalf the case has been brought. It is arguably not fair to the defendant because they are in a courtroom where they do not have a fair chance to defend themselves. It can be fixed, and it ought to be fixed.

The legislation before us today will not end the practice of class action lawsuits being litigated and decided in State courts. I believe the majority of class action lawsuits, even if this legislation is passed, which I am encouraged that it will, will still continue to be held in State courts, and they should be. We will have the opportunity to explain why that is true later on.

Before my 5 minutes expires, I conclude with this: There are any number of people on both sides of the aisle who would like to offer amendments to this bill. We have been working for 7 years to try to pass something that the House, the Senate, and the President will agree to. The time has come. To the extent that we make a change, whether it is in a Republican amendment or a Democratic amendment that might be offered, if we make a change, we invite the other side to retaliate and to offer their amendments and

perhaps to adopt their amendments. For those of us who want to see this bill passed, I believe this legislation is about the fairest balance we are going to get, and I would encourage us to support it. We should consider and debate the amendments but in the end turn those amendments down.

I look forward to debating each of those amendments, and I hope in the end we can accomplish three things with this legislation: No. 1, make sure that where small people are harmed in a modest way, they have the opportunity to be made whole; No. 2, make sure that the defendants who are pulled into court on these class action lawsuits have a reasonable chance of getting a fair shake; and lastly, I am not interested in overburdening Federal judges. I think most of this litigation should remain in State court. I believe the compromise we have struck will do that. Those are our three goals, and I look forward to the debate that is going to follow.